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**OFFICE OF PETITIONS**

~~In re Application of  
Hollitt et al.  
Application No. 08/935,108  
Filed: September 29, 1997  
Attorney Docket No. 94150CONT~~

DECISION GRANTING  
PETITION

~~In re Application of  
Hollitt et al.  
Application No. 09/819,095  
Filed: April 26, 2001  
For: UPGRADING TITANIFEROUS  
MATERIALS~~

This is a decision on petition under 37 CFR § 1.53(e) filed June 27, 2001, requesting that an improper Continued Prosecution Application (CPA) under 37 CFR § 1.53(d) be treated as an application under 37 CFR § 1.53(b) and be accorded a filing date of April 26, 2001.

On October 26, 2000, a final Office action was mailed in application No. 08/935,108, which set a three (3) month shortened statutory period for reply. In response, a petition for a three (3) month extension of time and a request for a CPA under 37 CFR § 1.53(d) based on prior application No. 08/935,108 were deposited on April 26, 2001. However, CPA practice no longer applies to applications, other than design applications, if the prior application was filed on or after May 29, 2000.<sup>1</sup> Accordingly, the CPA request was improper because the prior application was filed on or after May 29, 2000.

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<sup>1</sup>An earlier CPA was filed in application No. 08/935,108 on October 18, 2000. Thus, 37 CFR 1.53(d)(1)(i) does not permit the filing of a further CPA.

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a request for continued examination of the prior application (identified in the request for CPA) under new 37 CFR § 1.114.

On May 10, 2001, a Notice of Improper Request For Continued Examination (RCE) was mailed, stating that the RCE was improper because the RCE was not accompanied by a submission as required by 37 CFR § 1.114. The Notice further stated that since the application was not under appeal, the time period set forth in the final Office action continued to run from the mailing date of the action. Because applicants did not submit a submission with the RCE, the application became abandoned on April 27, 2001. A Notice of Abandonment was mailed on May 17, 2001.

On June 27, 2001, applicants filed the present petition under 37 CFR § 1.53(e). Applicants indicated that they did not want the request for a CPA to be treated as a request for continued examination under 37 CFR § 1.114. Rather, applicants requested that the improper CPA be converted to an application under 37 CFR § 1.53(b). With the present petition, applicants submitted a complete copy of the prior application as originally filed, a copy of all amendments entered in the prior application, and a copy of the executed declaration previously filed.

The petition is granted.

The application under 37 CFR 1.53(b) filed on April 26, 2001, has been assigned application No. 09/819,095. The CPA request, the present petition, the copy of the application as originally filed, the copy of all amendments entered in the prior application, and a copy of the executed declaration have been removed from the file of application No. 08/935,108 and have been placed in application No. 09/819,095. A copy of the CPA request and the present petition will be retained in application No. 08/935,108 to complete the record therein. All further correspondence concerning the application under 37 CFR 1.53(b) should be directed to application No. 09/819,095, not application No. 08/935,108.

The Office finance records will be corrected to show that the \$710.00 filing fee and the additional claim fees totaling \$36.00, paid on April 26, 2001, were paid in application No. 09/819,095, not in application No. 08/935,108.

Application No. 08/935,108 will be forwarded to Files Repository.

Application No. 09/819,095 will be forwarded to the Office of Initial Patent Examination for further processing as an application filed under 37 CFR 1.53(b), not under 37 CFR 1.53(d), with a filing date of April 26, 2001, using the copy of the original application papers submitted on June 27, 2001.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.

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